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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2014-0002]

RIN 0579-AD98

Importation of Kiwi From Chile Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to list kiwi (Actinidia deliciosa and Actinidia chinensis) from Chile as eligible for importation into the United States subject to a systems approach. Under this systems approach, the fruit would have to be grown in a place of production that is registered with the Government of Chile and certified as having a low prevalence of Brevipalpus chilensis. The fruit would have to undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit would have to be inspected in Chile at an approved inspection site. Each consignment of fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of Brevipalpus chilensis based on field and packinghouse inspections. This proposed rule would allow for the safe importation of kiwi from Chile using mitigation measures other than fumigation with methyl bromide.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0002>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2014-0002, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0002> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-71, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

The regulations in § 319.56-4(a) provide that fruits and vegetables that can be imported using one or more of the designated phytosanitary measures in § 319.56-4(b) to mitigate risk will be listed, along with the applicable requirements for their importation, on the Internet (currently in the Fruits and Vegetables Import Requirements [FAVIR] database at www.aphis.usda.gov/favir). Under those provisions, kiwi from Chile (Actinidia deliciosa and Actinidia chinensis) are currently listed in the FAVIR database as enterable subject to inspection in Chile or treatment with methyl bromide.

The regulations in § 319.56-4(a) also provide that commodities that require phytosanitary measures other than those measures cited in § 319.56-4(b) may only be imported in accordance with applicable requirements in § 319.56-3 and commodity-specific requirements contained elsewhere in the subpart. Under those provisions, baby kiwi (Actinidia arguta) from Chile are authorized for importation into the continental United States under a systems approach. The conditions applicable to the importation of baby kiwi from Chile are listed in § 319.56-53.

In this document, we are proposing to amend § 319.56-53 to include kiwi that is currently enterable into the United States subject to inspection or treatment, thereby making the kiwi eligible for importation under the same systems approach as baby kiwi.

Our review of the information supporting the safe importation into the United States of Chilean kiwi under the listed phytosanitary measures is examined in a commodity import evaluation document (CIED) titled “Importation of Fresh Fruits of Kiwi (Actinidia deliciosa and Actinidia chinensis) from Chile into the United States.” The CIED may be viewed on the Regulations.gov Web site or in our reading room (see ADDRESSES above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You

may request paper copies of the CIED by calling or writing to the person listed under FOR FURTHER INFORMATION CONTACT.

In June 2010, APHIS recognized all of Chile as a Medfly-free area. Therefore, the CIED identifies one quarantine pest that could be introduced into the United States in consignments of kiwi from Chile: Brevipalpus chilensis. A quarantine pest is defined in § 319.56-2 as "a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled." In the CIED, the likelihood and consequences of introducing this pest to the United States are considered, and B. chilensis is rated as having a medium pest risk potential. Pests receiving a rating within the medium range may necessitate specific phytosanitary measures in addition to standard port-of-entry inspection of the commodity being imported into the United States.

Based on the findings of our CIED, we are proposing to allow the importation of fresh kiwi from Chile into the United States, subject to the same systems approach in place for baby kiwi from Chile. Under a systems approach, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified, whereby fruits and vegetables may be imported into the United States from countries that are not free of certain plant pests. The systems approach for fresh kiwi from Chile would require the fruit to be grown in a place of production that is registered with the national plant protection organization (NPPO) of Chile. The fruit would have to undergo pre-harvest sampling at the registered production site under the direction of the NPPO of Chile and, once harvested, placed in field cartons or containers marked to allow for traceback to the production site. The NPPO of Chile would present a list of production sites certified as having a low prevalence of B. chilensis to APHIS. Following post-harvest processing, the fruit would

have to be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile. Each consignment of the fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of B. chilensis based on field and packinghouse inspections.

The mitigation measures in the proposed systems approach are discussed in greater detail below.

Production Site Registration

The production site where the fruit is grown would have to be registered with the NPPO of Chile. Harvested kiwi would have to be placed in field cartons or containers that are marked to show the official registration number of the production site. Registration would have to be renewed annually.

Registration of production sites with the NPPO of Chile and marking of field cartons or containers with the registration numbers would allow traceback to the production site if pest problems were found on fruit shipped to the United States. Problem production sites could then be removed from the program until further mitigation measures were taken to reduce pest populations.

Low-Prevalence Production Site Certification

Between 1 and 30 days prior to harvest, random samples of fruit would have to be collected from each registered production site under the direction of the NPPO of Chile. The number of fruit required to be sampled would be set forth in an operational workplan. An operational workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities that specifies in detail the phytosanitary measures that will comply with our regulations

governing the import or export of a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Operational workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed. We are proposing to amend the regulations to require that the NPPO of Chile provide APHIS with an operational workplan for the importation of baby kiwi and kiwi.

The random samples of fruit would have to undergo a pest detection and evaluation method as follows: The fruit would have to be washed using a flushing method, placed in a 20-mesh sieve on top of a 200-mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The washing process would then be repeated immediately after the first washing. The contents of the 200-mesh sieve would then be placed on a petri dish and analyzed for the presence of live B. chilensis mites. If a single live B. chilensis mite were found, the production site would not qualify for certification as a low-prevalence production site. Each production site would have only one opportunity per season to qualify as a low-prevalence production site, and certification of low prevalence would be valid for one harvest season only. The NPPO of Chile would be required to present a list of certified production sites to APHIS annually.

Production site low-prevalence certification would identify problem production sites and prevent the shipment of fruit with B. chilensis mites from such sites. This mite sampling method is identical to the method currently in use for baby kiwi production areas in Chile and has been found to be successful in identifying production areas with high and low populations of mites.

Post-Harvest Processing

After harvest, all damaged or diseased fruits would have to be culled at the packinghouse, and the remaining fruit would have to be packed into new, clean boxes, crates, or other APHIS-approved packing containers. Each container would have to have a label identifying the registered production site where the fruit originated and the packing shed where it was packed.

Post-harvest processing procedures, such as culling damaged fruit and sampling for mites, would remove fruit that could contain pests from consignments being shipped to the United States. Culling is a standard procedure to produce quality fruit without pests. Labeling of containers to identify both production site and packing shed would aid in traceback.

Phytosanitary Inspection

The fruit would have to be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile following any post-harvest processing. A biometric sample would have to be drawn from each consignment. In order to be eligible for shipment to the continental United States, the fruit in the consignment would have to pass inspection by meeting the following requirements:

- Fruit presented for inspection would have to be identified in the shipping documents accompanying each lot of fruit to specify the production site(s) where the fruit was produced and the packing shed(s) where the fruit was processed. This identification would have to be maintained until the fruit is released for entry into the United States.
- The biometric sample referred to above of the boxes, crates, or other APHIS-approved packing containers from each consignment would be selected by the NPPO of Chile, and the fruit from these boxes, crates, or other APHIS-approved packing containers would be visually inspected for quarantine pests. A sample of the fruit selected in accordance with

the operational workplan would have to be washed with soapy water and the collected filtrate microscopically examined for B. chilensis. If a single live B. chilensis mite were found during the inspection process, the certified low-prevalence production site where the fruit was grown would lose its certification. In addition, the production site of origin would be suspended from the low prevalence certification program for the remainder of the harvest season.

The proposed requirements for the identification in shipping documents of the kiwi to their production sites and packing sheds would aid in traceback if pests were found. The proposed requirements for visual inspection and biometric sampling of the fruit would provide additional layers of protection against the possibility of kiwi infested with quarantine pests being shipped from Chile to the United States. These methods have proved effective when employed to inspect consignments of citrus and baby kiwi from Chile.

Phytosanitary Certificate

Each consignment of fruit would have to be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of B. chilensis based on field and packinghouse inspections and grown, packed, and shipped in accordance with § 319.56-53.

Requiring a phytosanitary certificate would ensure that the NPPO of Chile has inspected the fruit and certified that the fruit meets the conditions for export to the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

APHIS is proposing to amend the fruits and vegetables regulations to list kiwi (Actinidia deliciosa and Actinidia chinensis) from Chile as eligible for importation into the United States subject to a systems approach to pest risk mitigation. The systems approach, which integrates prescribed measures that cumulatively achieve the appropriate level of phytosanitary protection, would be the same that is currently applicable for the entry of baby kiwi (Actinidia arguta) from Chile into the continental United States. Kiwi from Chile is currently listed as enterable subject to inspection in Chile or treatment with methyl bromide.

Production, consumption, and trade of kiwi by the United States have been expanding and are expected to continue to increase. Over the 5 years from 2008 through 2012, U.S. kiwi production and imports expanded by about 29 percent and 24 percent, respectively, and U.S. exports by 48 percent. U.S. consumption of kiwi grew by about 23 percent over this same 5-year period. However, the United States is dependent on imports for the major share of its kiwi supply. In 2012, nearly four of every five kiwis consumed in the United States were imported. Chile is the principal foreign source, supplying one-half of the kiwis imported by the United States in 2012, up from approximately one-third of U.S. kiwi imports in 2008. Chile is expected to continue to dominate the supply of kiwi to the United States in the near term. Under the proposed rule, Chile's kiwi exporters would have the option of using the systems approach rather than relying on inspection of the fruit in Chile or fumigation with methyl bromide to meet import requirements.

Although the United States is a net importer of kiwi, the percentage increase in U.S. kiwi exports, 2008-2012, was twice the percentage increase in U.S. kiwi imports; U.S. producers are actively expanding their sales to other countries. We also note that kiwi imports from Chile are largely counter-seasonal to kiwi sales by domestic producers. California produces 98 percent of

the kiwis grown in the United States, and the California season runs October through May.

Kiwi from Chile is predominantly imported during the spring and summer months. Ninety-four percent of Chilean kiwi imported in 2012 arrived between April and September. Although kiwi production in the United States is expanding, it remains a relatively small agricultural industry, with fewer than 300 growers whose farms average about 13 acres each. Nevertheless, it is a vibrant industry with an expanding export market. This fact, together with the counter-seasonality of kiwi imports from Chile, suggests that the economic impact of the proposed rule for U.S. small entities would be minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow kiwi to be imported into the United States from Chile. If this proposed rule is adopted, State and local laws and regulations regarding kiwi imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Lists of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319-FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. Section 319.56-53 is amended as follows:

- a. By revising the section heading;
- b. By revising the introductory text;
- c. By redesignating paragraphs (a), (b), (c), (d), and (e) as paragraphs (b), (c), (d), (e), and (f), respectively, and adding a new paragraph (a);
- d. By revising the first and second sentences after the heading of newly designated paragraph (b);
- e. By revising the third sentence after the heading of newly designated paragraph (e); and
- f. By revising newly designated paragraph (f).

The revisions and addition read as follows:

§ 319.56-53 Fresh kiwi and baby kiwi from Chile.

Fresh kiwi (Actinidia deliciosa and Actinidia chinensis) may be imported into the United States from Chile, and fresh baby kiwi (Actinidia arguta) may be imported into the continental United States from Chile under the following conditions:

(a) The national plant protection organization (NPPO) of Chile must provide a workplan to APHIS that details the activities that the NPPO of Chile will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section.

(b) * * * The production site where the fruit is grown must be registered with the NPPO of Chile. Harvested kiwi and baby kiwi must be placed in field cartons or containers that are marked to show the official registration number of the production site. * * *

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(e) * * * Kiwi in any consignment may be shipped to the United States, and baby kiwi in any consignment may be shipped to the continental United States, under the conditions of this section only if the consignment passes inspection as follows:

* * * * *

(f) Phytosanitary certificate. Each consignment of fresh kiwi and fresh baby kiwi must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of Brevipalpus chilensis and was grown, packed, and shipped in accordance with the requirements of 7 CFR 319.56-53.

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Done in Washington, DC, this 9th day of October 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

